

TAB D

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 04CV12333MEL

CASAS, BENJAMIN & WHITE, LLC.,

Plaintiff,

vs.

THE POINTE GROUP, INC., GERALD S. FREID; BARRY

FREID; KEY CORPORATE CAPITAL, INC.,

Defendants.

DEPOSITION OF GERALD S. FREID

March 9, 2005 - 10:35 a.m.

Conn, Kavanaugh, Rosenthal, Peisch & Ford

10 Post Office Square

Boston, Massachusetts

Reporter: Donna J. Whitcomb, CSR/RPR/RMR

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 CONN, KAVANAUGH, ROSENTHAL, PEISCH & FORD</p> <p>4 By Erin K. Higgins, Esquire</p> <p>5 10 Post Office Square</p> <p>6 Boston, Massachusetts 02109</p> <p>7 (617) 482-8200</p> <p>8 On behalf of the Plaintiff.</p> <p>9</p> <p>10 GORDON HALEY, LLP</p> <p>11 By Stephen F. Gordon, Esquire</p> <p>12 101 Federal Street</p> <p>13 Boston, Massachusetts 02110</p> <p>14 (617) 261-0100</p> <p>15 On behalf of The Pointe Group, Inc.</p> <p>16</p> <p>17 NIXON PEABODY, LLP</p> <p>18 By W. Scott O'Connell, Esquire</p> <p>19 100 Summer Street</p> <p>20 Boston, Massachusetts 02110</p> <p>21 (617) 345-1000</p> <p>22 On behalf of Key Corporate Capital, Inc.</p> <p>23</p> <p>24</p>	<p>1 PROCEEDINGS</p> <p>2 GERALD S. FREID, after having been</p> <p>3 satisfactorily identified was duly sworn by the</p> <p>4 Notary Public that his testimony would be the truth,</p> <p>5 the whole truth, and nothing but the truth,</p> <p>6 testified as follows in answer to direct</p> <p>7 interrogatories by Ms. Higgins:</p> <p>8 Q. Sir, could you please state your full name</p> <p>9 for the record including your middle name?</p> <p>10 A. Gerald Steven Freid.</p> <p>11 Q. Steven with a "V" or "P-H"?</p> <p>12 A. "V."</p> <p>13 Q. And your date of birth?</p> <p>14 A. 2/11/58.</p> <p>15 Q. Where do you live, sir?</p> <p>16 A. 47 William Street, Needham, 02494.</p> <p>17 Q. Who do you live there with?</p> <p>18 A. My wife and two children.</p> <p>19 Q. What is your wife's name?</p> <p>20 A. Kim.</p> <p>21 Q. Freid?</p> <p>22 A. Yes.</p> <p>23 Q. And your children's names?</p> <p>24 A. Older one is Jared. He goes to college so</p>
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<p>1 INDEX</p> <p>2 EXAMINATION OF: PAGE</p> <p>3 GERALD FREID</p> <p>4 By Ms. Higgins 4, 227</p> <p>5 By Mr. O'Connell 173</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 NO. PAGE</p> <p>9 32 Indemnification Letter, 9/14/03 56</p> <p>10 Gerald Freid to CBW</p> <p>11 33 Letter with Attachments, 12/20/03 56</p> <p>12 CBW to Freid</p> <p>13 34 E-mail, 8/31/04, Gordon to Kauffman 133</p> <p>14 Re: Encroachment Problem</p> <p>15 35 E-mail, Gordon to Kauffman, 9/17/04 134</p> <p>16 Re: Grand Jury Subpoena Objection Letter</p> <p>17 36 E-mail, 9/25/04, Gordon to Sucoff 135</p> <p>18 and Henken</p> <p>19 37 E-mail, Caine to Freid, 9/29 151</p> <p>20 38 E-mail, Cover Letter and 154</p> <p>21 Closing Statement</p> <p>22</p> <p>23</p> <p>24 *Original exhibits retained by Ms. Higgins.</p>	<p>1 he's home half the year. He's 20. And Harry is 16.</p> <p>2 Q. How long have you lived at that address?</p> <p>3 A. 20 years.</p> <p>4 Q. Where do you work?</p> <p>5 A. At The Pointe Group.</p> <p>6 Q. What is your position there?</p> <p>7 A. I'm the treasurer.</p> <p>8 Q. How long have you been the treasurer?</p> <p>9 A. About a year.</p> <p>10 Q. And The Pointe Group is located at the</p> <p>11 address that your brother gave us yesterday?</p> <p>12 A. Yes.</p> <p>13 Q. And just to get this out of the way, do</p> <p>14 you have a business card?</p> <p>15 A. I do.</p> <p>16 Q. And does it identify you as the treasurer</p> <p>17 at The Pointe Group?</p> <p>18 A. It does.</p> <p>19 Q. What position did you hold before you</p> <p>20 became treasurer?</p> <p>21 A. I didn't have a position.</p> <p>22 Q. Okay, did you have a business card, did</p> <p>23 you carry a business card?</p> <p>24 A. No.</p>

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<p style="text-align: right;">Page 158</p> <p>1 sorts of massive confusion going on with thousands 2 of things being shoved in front of the people's 3 faces to have them sign. 4 And people running in and out of the 5 office making conferences left and right, and I 6 basically got dizzy watching it. So there was no 7 set this group was sitting here and this group was 8 sitting here. We were waiting for the okay so I 9 could take my mother home. 10 Q. Now, your mother I'm sure had to sign some 11 documents, correct? 12 A. Yes. 13 Q. And you said you were there holding her 14 hand, correct? 15 A. Yes. 16 Q. So were you sitting with her and looking 17 at documents that she was being asked to sign? 18 A. No. 19 Q. Was someone else doing that? 20 A. Yes. 21 Q. The attorneys? 22 A. Yes. 23 Q. Do you remember your mother asking whether 24 the brokers were going to be paid?</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Did you have any discussions with Matt Caine 2 that day? 3 A. No, I did not. 4 Q. You didn't call Matt Caine and say you're 5 not getting paid? 6 A. I referred him to my attorney at that 7 point because... 8 Q. Okay, so he called you? 9 A. He could have called me and if I did pick 10 up the phone, I asked him to please call Steve 11 Gordon if he has any questions. 12 Q. How about after either the day of the 13 closing or after the closing; did you ever have any 14 conversations with Steve Dunham about CBW's fee? 15 A. He vanished; the last two weeks of the 16 sale. 17 MR. GORDON: I think the question was 18 after the closing; is that correct? 19 Q. Well, the day of or any time after did you 20 have any discussions with Steve Dunham -- 21 A. No. 22 Q. -- about the fact that CBW wasn't paid out 23 of the sale proceeds? 24 A. No.</p>
<p style="text-align: right;">Page 159</p> <p>1 A. Absolutely not. 2 Q. Do you remember John McCullough saying 3 anything about when or how the brokers would be 4 paid; not in a private conference with you but -- 5 A. No. 6 Q. -- in the presence of other people? 7 A. There were no discussions. 8 Q. How did you learn that CBW wasn't paid out 9 of the proceeds? 10 A. I don't know. I don't know whether I -- I 11 certainly didn't see these papers. I don't know. I 12 saw it written down somewhere that there was -- I 13 can't put my hand on it. I don't know how -- I 14 don't know how I was informed. I don't know how I 15 knew. My brother might have told me. I can't 16 recollect or -- but when I found out I was shocked. 17 Q. Now, you knew you had signed the 18 engagement letter so you knew that The Pointe Group 19 had agreed to pay this fee, correct? 20 A. That's correct. 21 Q. So when you learned that CBW wasn't going 22 to be paid out of the sale proceeds, were you also 23 concerned about a liability to CBW? 24 A. I was certainly concerned, yes.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Mr. Freid, are you aware that The Pointe 2 Group has brought a counterclaim against Casas, 3 Benjamin & White in this case? 4 A. No. 5 Q. Are you aware of anything that CBW did or 6 failed to do that you consider to be a breach of its 7 fiduciary duties to The Pointe Group? 8 A. I don't know the law, no. 9 Q. Okay. Well, is there anything that you 10 could think of that you thought CBW did or failed to 11 do that you thought was detrimental to The Pointe 12 Group? 13 A. No. 14 Q. And is there anything that they did or 15 failed to do that you thought indicated that they 16 were aligned with Key Bank against The Pointe Group? 17 A. I think they were aligned with themselves 18 and whatever benefited them, whatever they thought 19 the right thing to do at the time, they did. 20 Whether it went back and forth, allegiances to one 21 side to another side or even to the buyer, but 22 that's -- I believe wherever -- they were as 23 brokers, as the real estate brokers, they were 24 involved with the buyer, the seller and the bank.</p>

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